Pac. 847. Apparently it is only a matter of time before the right of the wife to recover for the enticing away of her husband will be acknowledged as universally as his right under like facts now is.

JUDGMENTS ON THE MERITS, WHAT CONSTITUTES—FORM—NONSUIT.—At the trial of a cause the plaintiff introduced his evidence and rested, whereupon the defendant made a motion, challenging the legal sufficiency of the evidence and requiring the court to discharge the jury and decide as a matter of law what verdict should be found. The court granted the motion and "adjudged that plaintiff take nothing herein and defendants recover their costs, etc." A Statute of Washington permitted the court to discharge the jury in such cases. *Held,* two judges dissenting, this was a judgment on the merits. *McKim* v. *Porter et al.* (1910), — Wash. —, 110 Pac. 1073.

The two dissenting judges considered this a judgment of nonsuit and no bar. The distinction between a judgment on the merits and a nonsuit is well defined, and the difference in their effect the one as res adjudicata and the other as no bar, it is too well settled to require citation of authority. "Merits" is not employed here in the moral sense. *Tracey et al.* v. *Shumate et al.*, 22 W. Va. 474. A judgment on the merits is based on the real and substantial rights and issues. FREEMAN, JUDG., § 360; *Buck* v. *Collins*, 69 Me. 445; and it is not on the merits when the suit is dismissed for want of jurisdiction, defect of pleadings, or parties, or a misconception of his cause of action, or suit prematurely brought. *Hughes* v. *United States*, 4 Wall. 232. The court in the principal case distinguishes "*legal* sufficiency of the evidence," as provided by the statute under which the motion was made, from *probative* sufficiency of the evidence, and holds that under the former the judgment is on the merits, while if it is the probative sufficiency that is attacked, the judgment is a non-suit. The evidence affirmatively showed defendant entitled to judgment, therefore a verdict based thereon was on the merits. *Morgan* v. *Chi., M. & St. P. R. R. Co.*, 83 Wis. 348; *McGuire* v. *Bryant L. & S. Mill Co.*, 53 Wash. 425. If, from the words used it can be determined what the judgment was, the use of informal or inartificial language will not render a judgment on the merits bad, *Minkhart* v. *Hankler*, 19 Ill. 47; *Buckfield* v. *Gorham*, 6 Mass. 445.

LANDLORD AND TENANT—COLLAPSE OF BUILDING—LIABILITY OF TENANT.—Defendant, tenant of a building, used the same as a slate mantel factory. Building had been condemned, before defendant's occupation, and repaired by the owner. The structure collapsed, killing plaintiff's husband, who had been in the employ of defendant. Suit is brought against the tenant for overloading the floors. *Held,* the tenant may show that the owner of the building was negligent in constructing and repairing the walls and that the owner had notice of the unsafe condition of the building. *Thorp* v. *Boudwin* (1910), — Pa. —, 77 Atl. 421.

Similar to the principal case was *McKenna* v. *Nixon Paper Co.*, 176 Pa. 306, 35 Atl. 131. Here a building used by defendants as a paper warehouse collapsed. It was held that the mere fact of collapse is not proof that defendant overloaded the building, lessee having no notice of the defect;

tenant cannot be charged with negligence by reason of a defect in the building. In the principal case, however, the tenant did have notice of the defect, and must have known that placing heavy slabs of slate on the upper floors would possibly overload the building. Under such circumstances, he might well have been considered negligent in failing to make such repairs himself. Even though the landlord may be liable for the unsafe condition of the building, the tenant should not thereby be absolved from his responsibility to third persons, for a neglect to make such repairs as are incumbent on him. TAYLOR, LANDLORD & TENANT, Ed. 9, § 193; *Ryan* v. *Fowler*, 24 N. Y. 410; *Whalen* v. *Gloucester*, 6 Thomp. & C. 135; *Davenport* v. *Ruckman*, 37 N. Y. 568. Undoubtedly, whether the tenant was negligent and liable or not, the landlord could be shown guilty of negligence. Usually the landlord's liabilities are suspended as soon as the tenant commences his occupation. *Brown* v. *White*, 202 Pa. 297; *Rider* v. *Clark*, 132 Cal. 382. But if the injuries are the result of faulty construction or repair of the premises, the landlord is still liable, notwithstanding the lease. *Samuelson* v. *Cleveland Iron Mining Co.*, 49 Mich. 164. So the plaintiff in the principal case rightfully instituted suits against both landlord and tenant. While judgment might be recovered in each suit, the plaintiff could claim only one satisfaction. *Seither* v. *Traction Co.*, 125 Pa. 397, 17 Atl. 338, 4 L. R. A. 54, 11 Am. St. Rep. 905.

MASTER AND SERVANT—ACTS CONSTITUTING.—The two defendants, a railway company and a brewing company, agreed that for a fixed rental the railway company would rent a locomotive to the brewing company for the exclusive use of the latter in its yard, the ties and rails in said yard being owned by the railway company. The engineer and fireman were selected by the railway company, but paid by the brewing company. There was a failure to ring the bell as was the custom, and the plaintiff, an employee of the brewing company, was injured. *Held*, that the railway and brewing companies were engaged in a joint enterprise and were jointly liable. *Shoen* v. *Chicago, St. P., M. & O. Ry. Co. et al.* (1910), — Minn. —, 127 N. W. 433.

Not a single case is cited, in the opinion, in support of the above decision. *Donovan* v. *Laing* [1893], 1 Q. B. 629, holds that defendants are not liable for the negligence of their employee, in charge of a crane, loaned to a third party. *Rourke* v. *Colliery Co.*, 2 C. P. D. 205; *Powell* v. *Construction Co.*, 88 Tenn. 692; and *Miller* v. *Minn. etc. R. R. Co.*, 76 Iowa 655, support the same view as the English case. *New Orleans etc. R. R. Co.* v. *Norwood*, 62 Miss. 565 and *Coggin* v. *Cent. R. R.*, 62 Ga. 685, taking a contrary view, both cite the so-called Carriage Cases (cases involving the status of a driver sent out by a liveryman with a carriage.) The carriage cases were carefully distinguished from a case like the principal one in the *Donovan* case and in *Little* v *Hackett*, 116 U. S. 366. But passing the Construction Cases and coming to those more nearly on all fours with the principal case we come to *Byrne* v. *Kansas City, Ft. S. & M. R. Co., et al.*, 61 Fed. 605, in which TAFT, J., holds that a railroad company is not responsible for negligence in the operation of an engine, when, at the time of the accident, the engine and